



IFW AF 12855
67

PATENT
Attorney Docket No. 401587/A&P

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Yuji ARIYOSHI

Application No. 10/082,191

Filed: February 26, 2002

For: TEMPERATURE AVERAGING
FLUID FLOW MEASURING
APPARATUS

Art Unit: 2855

Examiner: C. Mack

REQUEST FOR WITHDRAWAL OF FINALITY OF REJECTION

U.S. Patent and Trademark Office
220 20th Street S. Customer Window, Mail Stop
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Dear Sir:

Applicant respectfully requests that the finality of the rejection in the Office Action mailed July 23, 2004 be withdrawn as premature. A response on the merits of the rejection will be filed in due course.

A first Office Action in this patent application was mailed on February 13, 2004. In that action claims 6-8 were stated to be allowed and claims 1-5 were rejected as anticipated by Kawai et al. (U.S. Patent 5,965,811, hereinafter Kawai).

In response to the Office Action of February 13, 2004, Applicant amended only claim 1 by eliminating the word "temperature" as redundant. There was no substantive amendment of any claim.

In reply, a second Official Action, designated as containing a final rejection, was mailed July 23, 2004. In the July 23, 2004 Office Action, the Examiner rejected claims 1-5 as indefinite based upon language that was not altered in the previous response. In addition, claims 1-5 were again rejected based upon Kawai, but claims 1-5 were not rejected as anticipated by Kawai. Rather, those claims were now rejected as obvious over Kawai.

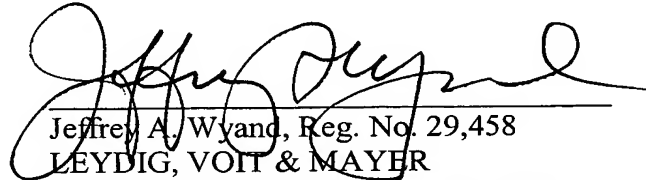
Nothing in the response filed by the Applicant on April 28, 2004 caused the rejection of claims 1-5 as indefinite. Further, the Examiner altered the prior art rejection when there was no amendment affecting the prior art rejection. Thus, no action taken by the Applicant necessitated the new rejection. Clearly, the Examiner concluded after considering the response filed April 28, 2004 that the rejection for anticipation was erroneous and withdrew that rejection. Under

In re Appln. of Yuji ARIYOSHI
Application No. 10/082,191

these circumstances it is improper to make a second Official Action a final rejection. MPEP 706.07(a) (second paragraph) and 706.07(d).

Accordingly, Applicant respectfully requests that the finality of the rejection contained within the Office Action mailed July 23, 2004 be withdrawn.

Respectfully submitted,



Jeffrey A. Wyand, Reg. No. 29,458

LEYDIG, VOIT & MAYER

700 Thirteenth Street, N.W., Suite 300

Washington, DC 20005-3960

(202) 737-6770 (telephone)

(202) 737-6776 (facsimile)

Date: August 10, 2004
JAW:tps

PTO Head (Rev. 6/5/04)